

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Sean Davis	:	
-vs-	:	
Commonwealth Edison Company	:	10-0177
	:	
Complaint as to billing/charges in	:	
Spring Grove, Illinois.	:	

ORDER

I. Procedural History

By the Commission:

On March 4, 2010, pursuant to Section 10-108 of the Public Utilities Act ("the Act"), (220 ILCS 5/10-108), Sean Davis ("Complainant") filed a verified Complaint with the Illinois Commerce Commission ("Commission") against Commonwealth Edison Company ("ComEd" or "Respondent"). Complainant alleged that a new meter he received on April 17, 2008 clearly ran slower than the old meter, which indicated to him that he had been overcharged \$2882 on the old meter.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, the parties convened for a Prehearing Conference on April 8, 2010, before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois. Thereafter, this matter came on for hearing on May 7, 2010 before a duly authorized ALJ of the Commission at its offices in Chicago, Illinois. Complainant appeared pro se and testified in his own behalf. Respondent appeared by counsel and presented the testimony of William M. Mueller, Principal Rate Administrator, Timothy J. Leahy, Business Manager and Thomas R. Rumsey, Meter Mechanic Specialist. At the conclusion of the hearing on May 7, the record was marked "Heard and Taken".

On June 28, 2010, the ALJ issued a Proposed Order in this matter. Complainant filed exceptions in the form of an e-mail addressed to the Office of the Chief Clerk. Respondent did not file an answer to the exceptions in any form.

II. Complainant Position

Complainant is purchasing by contract a 106-year old, two-story building at 2008 Main Street in Spring Grove, Illinois that contains a small bar on the first floor and a two-bedroom apartment on the second floor. The apartment is leased sporadically and tenants occupy it without a contract. All utilities are in Complainant's name, but the

building is still owned by the person from whom Complainant will eventually make the purchase.

Complainant stated after Respondent changed his meter on 1/2/07, both he and the installer immediately noticed that the new meter was operating slower than the meter just removed. The following month his bill was \$135 lower than the previous month and he had made no changes in his usage. Complainant asserts that he has been overcharged a total of \$2882 and it seems that his monthly bills, though slightly lower than when he had the old meter, are still high.

Complainant sponsored Exhibit 1, a bill dated 4/29/10 for service from 3/30/10 to 4/20/10, showing total current charges of \$75.64. He described this sum as the lowest total of current charges he has received in the three and one-half years he has operated the bar, however the total balance due on the bill is \$11,562.51.

Complainant operates the bar from 2 pm to 10 pm on weekdays and from 2 pm to 1 am on Friday and Saturday. It is closed on Mondays. Located behind the bar is an 8-door cooler, a refrigerator, two freezer chests and a walk-in cooler that has an operating fan but does not otherwise work. In the basement is a keg cooler and 3-door cooler. There are also lights, a microwave behind the bar, central air conditioning and a blender that is never used. The bar has a gas grill. The apartment is electrically heated with a refrigerator and an electric oven. Some past tenants have furnished their own microwave oven.

Complainant confirmed that the bar and the apartment are not metered separately. He obtained an estimate of \$2000 to have a second meter installed. He stated that if separate meters are required by law, he should have been so notified when he began the purchase of the building, otherwise all necessary rewiring and meter installation should be ComEd's responsibility. He informed ComEd that there was a commercial operation and a residential unit in the building when he contacted them to put service in his name. He was not certain whether he informed Respondent that there was only one meter serving the building, but he did not know it mattered at that time. The person from whom Complainant is purchasing the building did not inform him that the bar and the apartment should be separately metered.

III. Respondent Position

a. Testimony of Mr. Mueller

Mr. Mueller testified that a demand meter measures kilowatts, the maximum rate at which energy is used, as well as kilowatt-hours, the measure of energy used. He sponsored Respondent's Exhibit 1, a meter reading history for Complainant's account, which contains his comparison of delivery charges for residential and non-residential service for 12/31/08 through 12/31/09. He described in detail the calculations he performed and concluded that the demand meter, as opposed to a residential-type meter, would have resulted in lower delivery charges and lower bills for Complainant.

Mr. Mueller stated that Respondent's Exhibit 2, Ill.C.C. No. 10, Original Sheet No. 144, requires retail customers to be separately metered, while Exhibit 3, Ill.C.C. No. 10, Original Sheet No. 145, spells out conditions by which a customer would be considered not engaged in retail distribution. He said that Complainant did not fall into any of the listed exceptions. Exhibit 4, Ill.C.C. No. 10, Original Sheet No. 134, and Exhibit 7, Ill.C.C. No. 4, 16th Revised Sheet No. 10, both state that where electric service is furnished to a single premises used for residential and nonresidential purposes, such premises is not to be considered residential unless the preponderant electric service requirement is for residential purposes. Mr. Mueller testified that Complainant's preponderant usage is commercial. Exhibit 6, Ill.C.C. No. 10, Original Sheet No. 188, states that when a customer uses either 2000 kilowatt-hours per month or 10 kilowatt-hours in demand, a demand meter is required in order to bill the correct rates. Mr. Mueller stated that Complainant's building falls into that category. He added that 83 Ill. Adm. Code 430.130 requires residential and commercial service in the same structure to be separately metered.

b. Testimony of Mr. Leahy

Mr. Leahy testified that only actual readings were taken on Complainant's old and new meters, the sole exception being the estimated reading for the March 2010 bill. All readings are in line and the March bill is correct. He could not explain why the March bill was not based upon an actual reading.

He sponsored Exhibit 8, a meter reading history for Complainant's account before and after the exchange. It shows a meter change on 1/2/07, which was the result of a new rate structure. Meters were exchanged within the system only so that old tariffs could be billed for the first part of the month and new tariffs could be billed during the second part. The meters were physically exchanged on 4/17/08. Exhibit 9, Respondent's Account Activity Statement for Complainant, reflects Complainant's balance of \$11,562.61 and his last payment of \$700 on 2/10/10.

c. Testimony of Thomas Rumsey

Mr. Rumsey testified that a demand meter is the appropriate device to measure electric usage in a commercial establishment such as Mr. Davis'. He sponsored Exhibits 10A through 10D. Exhibit 10A shows that Complainant's meter was exchanged because the technician could not conduct a field test. The old and new meters were both single-phase cumulative demand types, each measuring demand the same way. Exhibit 10B shows that the old meter's test date as 5/8/08 and it tested 100.15% at full load, 100.11 % in power factor and 100.06% in light load. At hearing, Mr. Rumsey produced the actual meter that was exchanged and described the test procedure in detail. Test results are shown on the right-hand portion of Exhibit 10B. He noted that the test procedure and the results are both within Commission standards.

Exhibit 10C contains the test results on the old meter from 4/8/09. Mr. Rumsey testified those results were essentially the same as the test on the new meter and within

Commission standards. Exhibit 10D contains the 10/12/07 manufacturer's (Elster) test results from the meter currently installed at Complainant's premises. Mr. Rumsey testified that the test results were the same as the one he conducted. He concluded that the old and new meters recorded usage accurately. He added that neither the age nor the size of the premises would affect how a meter measures usage.

Mr. Rumsey concluded that it is Mr. Davis' responsibility to have the premises rewired to accommodate a separate meter to measure usage for the apartment.

IV. Commission Analysis and Conclusions

(Transcript ["Tr."] citations are taken from the May 7, 2010 hearing.)

Complainant claims he was overcharged \$2882 by Respondent, based on his observation of a new meter installed in his building that appeared to run slower than the old meter. Complainant stated that the installer also noted that the new meter ran slower.

Complainant's evidence consists of his testimony and Complainant Exhibit 1, a copy of Respondent's bill to Complainant dated 4/29/10 for \$75.64 in current charges and a total due of \$11,562.51. The bill provides no corroboration for his assertion that the new meter ran slower than the old meter and Complainant failed to offer any other evidence tending to support his claim that he was overcharged \$2882. Complainant also failed to explain how he calculated \$2882 as the particular amount of the overcharge.

Respondent's evidence established that Complainant's building is primarily a non-residential operation (Tr. at 60). Respondent Exhibits 10A through 10D contain the test results for Complainant's old and new meters, as performed by Respondent for both meters and by the manufacturer for the new meter. All tests establish that both meters measured electrical usage accurately at all times. Respondent Exhibit 2 requires Complainant to separately meter the residential and commercial portions of the building. Respondent Exhibit 1 contains the results of an analysis showing that if the electrical usage in the residential portion of the building had been measured separately, Complainant would have had lower delivery charges. (Tr. at 56-57).

The Commission concludes that Complainant failed to submit evidence sufficient to support his claim of overpayment and on that basis, the complaint should be denied.

V. Exceptions

Complainant argued that Respondent controlled the evidence in this matter. He questioned why the employee who changed the meter, and observed that the new meter ran slower than the old meter, was not present at the hearing. He also questioned why the manager with whom he spoke, and who had agreed with him about the new meter, was not at the hearing

Complainant's arguments are unpersuasive. The Commission knows of no authority that would require Respondent to produce employees to substantiate Complainant's allegations, even if Complainant had clearly identified the individuals in question. Complainant failed to show that he made any effort to compel Respondent to produce either of the employees to whom he refers. Moreover, we note that he did not cite any conversation with one of Respondent's managers when he testified at hearing. We conclude that Complainant bears the sole responsibility to produce evidence to support his allegations and he did not meet that obligation.

VI. Findings and Ordering Paragraphs

The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Respondent Commonwealth Edison Company is an Illinois corporation engaged in furnishing utility services in Illinois and, as such, is a public utility within the meaning of Section 3-105 the Illinois Public Utilities Act (220 ILCS 5/3-105);
- (2) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (3) Complainant Sean Davis alleged that a new meter installed in his premises ran slower than the previous meter and as a result he was overcharged \$2882 by Respondent.
- (4) Complainant's evidence failed to establish that the new meter ran slower than the old meter and Complainant failed to submit evidence explaining how he was overcharged \$2882;
- (5) Respondent's evidence showed that both meters were tested and were found to have measured usage accurately at all times;
- (6) the complaint should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by Sean Davis against Commonwealth Edison Company on March 4, 2010 is denied.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 18th day of August, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman